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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BANNER & WITCOFF 1001 G STREET N W SUITE 1100 WASHINGTON, DC 20001			VALENTI, ANDREA M	
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			3643	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/914,793

Applicant(s)

VAN TOL ET AL.

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7 and 9-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-7, 9-12, 14, 15, 21, 24-26 is/are rejected.
- 7) ☒ Claim(s) 13,16-20 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

The indicated allowability of claims 10, 15, and 22 are withdrawn in view of the reference(s) to U.S. Patent No. 5,779,066; U.S. Patent No. 5,762,212; U.S. Patent No. 2,102,479. Rejections based on the newly cited reference(s) follow.

Claim Objections

Claims 1, 12, 13, and 21 are objected to because of the following informalities:

Claim 1, line 6, "the same central plane" should be --a same central plane--

Claim 12, line 6, "the same central plane" should be --a same central plane--

Claim 13, line 6, "the same central plane" should be --a same central plane--

Claim 13, line 10, "wherein the inner walls" should be --wherein inner walls--

Claim 21, line 6, "the same central plane" should be --a same central plane--

Claim 25, line 6, "the same central plane" should be --a same central plane--

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9, 24, and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "softer" in claim 9 is a relative term, which renders the claim indefinite. The term "softer" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would

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not be reasonably apprised of the scope of the invention. The term "softer" renders the material the type of material indefinite. Does applicant intend that the clamping elements are cushioned or that the clamping elements are less resilient? Applicant hasn't identified the particular type of carrier material either. The examiner has taken this term to mean that the clamps have less rigidity are easier to bend than the carrier for the purpose of examination.

Claim 14 recites the limitation "the inner wall" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 24 is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 12, 14, 15, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,102,479 to Newfield.

Regarding Claim 12, Newfield teaches a holder for transporting plant cutting having no support in the ground or soil, comprising at least one carrier (Newfield #9) and a series of clamping elements (Newfield #7 and 8) which are fixed to the carrier and which are each adapted to clamp a plant cutting, wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is

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situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings, wherein the holder transports whole plant cutting placed in the hold (Newfield Fig. 4); and the clamping elements each comprise at least two parts (Newfield Fig. 3 there are two element #8), at least one of which is connected resiliently to the carrier (Newfield Fig. 3 #8 is connected via #7); and wherein the parts each take substantially the form of a semi-cylindrical **surface**, wherein both parts are connected to the carrier such that the non-loaded situation both parts are separated on either side by a narrow gap (Newfield Fig. 3 gap between the two elements #8 which are a semi-cylindrical surface).

Regarding Claim 14, Newfield teaches that the inner walls of the clamping elements together have a substantially oval section (Newfield both elements #8 together in Fig. 3).

Regarding Claim 15, Newfield teaches that each of the parts is connected to the carrier by at least two bridges (Newfield Fig. 3 element #8 is connected by bridges #7 and 6, bridge is taken to mean "links").

Regarding Claim 21, Newfield teaches that the clamping elements are connected to the carrier (Newfield screw #5) and since the clamping elements are wire they are capable of tilting on an axis extending substantially at a right angle to the plane of the carrier

Regarding Claim 22, Newfield teaches that each of the parts of the clamping elements are connected to the carrier by means of a connection subject to torsion (Newfield screw 35).

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Claims 1, 3-6, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,339,967 to Valiulis.

Regarding Claims 1, 3-6, 25 and 26, Valiulis teaches a holder for transporting plant cutting having no support in the ground or soil, comprising at least one carrier (Valiulis #19) and a series of clamping elements (Valiulis #23 and 24) which are fixed to the carrier and which are each adapted to clamp a plant cutting, wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings, wherein the holder transports whole plant cutting placed in the hold and wherein the carrier is manufactured from flat flexible plastic material (Valiulis Col. 2 line 20) in which at least three lips (Valiulis Fig. 1 #23 and 24) are punched at the position of each clamping element, which lips are adapted (merely means they are capable of performing the function) to fixedly clamp the plant cuttings.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6, 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,102,479 to Newfield in view of U.S. Patent No. 5,762,212 to Pomerantz.

Regarding Claims 1 and 6, Newfield teaches a holder for transporting plant cutting having no support in the ground or soil, comprising at least one carrier (Newfield #9) and a series of clamping elements (Newfield #7 and 8) which are fixed to the carrier and which are each adapted to clamp a plant cutting, wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel to each other, and the center of each of the clamping elements is situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings, wherein the holder transports whole plant cutting placed in the hold (Newfield Fig. 4).

Newfield teaches a carrier (i.e. Newfield lath #9), but is silent on the carrier is substantially flexible or is divided into substantially rigid pieces which are coupled in mutually flexible manner. However, Pomerantz teaches a holder/carrier constructed out of flexible plastic (Pomerantz abstract last line and element #10). It would have been obvious to one of ordinary skill in the art to modify the teachings of Newfield with the teachings of plastic of Pomerantz at the time of the invention since the modification is merely the selection of a known material for intended use selected for its light weight properties to reduce shipping/transporting costs and its ability to withstand environmental conditions such as rain without rapid decay.

Regarding Claim 3, Newfield as modified teaches that the carrier extends as a strip and that the clamping elements are fixed at regular mutual distances (Newfield Fig. 4 #9).

Regarding Claim 4, Newfield as modified teaches that the clamping elements are each fixed on the same side of the carrier (Newfield Fig. 4 #7 and 8).

Regarding Claim 5, Newfield as modified teaches the mutual distance between the clamping elements on one side of the carrier is greater than or equal to the mutual distance between the center of the clamping elements so that two carriers with their clamping elements can be placed between each other (Newfield Fig. 4 spacing of elements #7).

Regarding Claim 9, Newfield as modified teaches that the clamping elements have been made from softer material than the carrier (Newfield clamps are made from wire and wire can be viewed as being more malleable than plastic or wood).

Regarding Claim 11, Newfield as modified teaches that the clamping elements are each at least two parts, at least one of which is connected resiliently to the carrier (Newfield Fig. 3 #6, 7, 8).

Claims 1, 3, 4, 6, 9, 10, and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,779,066 to Drower in view of U.S. Patent No. 5,762,212 to Pomerantz.

Regarding Claims 1, 3, 4, and 6, Drower teaches a holder for transporting plant cutting having no support in the ground or soil, comprising at least one carrier (Drower

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#11) and a series of clamping elements (Drower #55) which are fixed to the carrier and which are each adapted (merely means they are capable of performing the function) to clamp a plant cutting, wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel (Drower Fig. 1 #13 and 15) to each other, and the center of each of the clamping elements is situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings.

Drower teaches that the holder is made out of plastic (Drower Col. 2 line 58), but is silent on it being flexible. However, Pomerantz teaches a holder of flexible plastic (Pomerantz abstract last line). It would have been obvious to one of ordinary skill in the art to modify the teachings of Drower with the teachings of Pomerantz at the time of the invention since the modification is merely the selection of a known particular form of plastic selected to reduce the amount of materials and thus reduce manufacturing costs and shipping/transporting costs.

Regarding Claim 9, Drower as modified teaches that the clamping elements have been made from softer material than the carrier (Drower #55 and Col. 3 lines 11-14).

Regarding Claims 10 and 24, Drower as modified teaches that the clamping and carrier elements are plastic and that the clamping elements are connected with the carrier utilizing injection molding (Drower Col. 4 line 3).

Claims 1, 3-5, 7, 9, 11, 12, 14, 21, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,880,133 to Cullinane in view of U.S. Patent No. 3,207,014 to Lindblom

Regarding Claims 1, 3-5 and 7, Cullinane teaches a holder for transporting plant cutting having no support in the ground or soil, comprising at least one carrier (Cullinane Fig. 1 #20) and a series of clamping elements (Cullinane Fig. 1 #19, Fig. 3, Fig. 2 #33 and 29) which are fixed to the carrier and which are each adapted to clamp a plant cutting, wherein the clamping elements are fixed to the carrier such that plant cuttings clamped in the clamping elements extend substantially parallel (Cullinane all the flowers clamped in element #38 are parallel to each other) to each other.

Cullinane is silent on a multiplicity of clamping elements in a series and the carrier is divided into substantially rigid pieces, which are coupled in mutually flexible manner. However, Lindblom teaches a multiplicity of clamping elements (Lindblom Fig. 1 #10) in series and that the carrier (Lindblom #12) is a rigid piece that is couple in a mutually flexible manner (Lindblom Fig. 1 #23) and thus the center of each of the clamping elements is situated substantially in the same central plane, wherein the central plane extends at a right angle to the plant cuttings. It would have been obvious to one of ordinary skill in the art to modify the teachings of Cullinane with the teachings of Lindblom at the time of the invention since the modification is merely the duplication of element clamping elements for a multiple effect performing the same intended function modified to create a aesthetically festive environment. Furthermore, it would have been obvious to modify the carrier and clamp elements of Cullinane with the

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flexible coupling of Lindblom (Lindblom #23 and 20) to decoratively designate a certain area of the church for those people participating in a ceremony.

Regarding Claim 9, Cullinane as modified teaches the clamping elements are made from softer material than the carrier (Cullinane teaches resilient plastic Col. 1 line 56 clamp and an inherently wooden church pew).

Regarding Claim 11, Cullinane as modified teaches the clamping elements each comprise at least two parts, at least one of which is connected resiliently to the carrier (Cullinane Fig. 1 #19 and Fig. 3).

Regarding Claims 12, 14, and 21, Cullinane as modified teaches that the parts each take the form of a semi-cylindrical *surface*, where both parts are connected to the carrier such that in the non-loaded situation both parts are separated on either side by a narrow gap and the inner wall have a substantially oval section (Cullinane Fig. 3 #51 and 52); the parts are capable of tilting on an axis extending substantially at a right angle to the plane of the carrier (Cullinane Fig. 1 and 1a show the device tilted).

Regarding Claim 24, Cullinane as modified teaches plastic molding (Cullinane abstract last line).

Allowable Subject Matter

Claim 13 is objected to for the grammatical error cited in the above claim objections section, but would be allowable if rewritten correcting this error.

Claims 16-20 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-6, 9-12, 14, 15, 21, 22, 24-26 have been considered but are moot in view of the new ground(s) of rejection.

The language of the claim is lends to a subcombination of a rack and not the combination of a rack and plant cuttings, therefore the racks of Valiulis and Drower are capable of transporting plant cuttings. In other words, applicant has not positively claimed the plant cuttings in the presented claim limitations.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 3,359,031.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

31 March 2005



Peter M. Poon
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4/1/05